Agenda Item: 12-29

Presentation of Administrative Law Judge's Recommended Decision, HOUSE OF RAEFORD FARMS, INC. V. NC DENR, 10 EHR 5508, Duplin Co.

Explanation:

The Chief of the Point Source Branch in the Division of Water Quality assessed House of Raeford Farms civil penalties of \$25,000 for discharging waste without a permit, \$25,000 for violation of the water quality standard for dissolved oxygen, and \$25,000 for the presence of settlable solids and sludge in excess the water quality standard in Cabin Branch Creek, a Class C-Sw water of the State, on September 10, 2009. Investigation costs of \$1,375.95 were also assessed.

The Division's evidence showed the presence of waste in the stream similar to that present in the wastewater treatment lagoon at House of Raeford's facility. The presence of the waste continued down the stream from the facility. Similar waste was not observed in the stream or headwaters above the facility.

House of Raeford's evidence showed its wastewater lagoons had not breached or spilled over the top. Two facilities with lagoon wastewater treatment systems were located up stream and had received notices of violation in the spring for discharges of waste and needed physical improvements. The Valley Protein rendering facility received animal parts waste from House of Raeford's facility. House of Raeford's witness opined that the dry summer weather and debris blocking the stream near its facility resulted in the trapping over time of waste from the other upstream facilities.

The Administrative Law Judge entered a Decision recommending only the \$25,000 penalty for the discharge of waste to the stream be upheld along with 1/3 of the investigation costs. The ALJ recommends reversal of the \$25,000 penalties for the DO standard violation and the settelable solids and sludge violation because the statutory discharge violation covered any related water quality standard violation and such penalties would be a double penalty.

Commission Consideration: Under the APA, the Commission shall adopt the ALJ's decision unless it demonstrates that the ALJ's decision is clearly contrary to the preponderance of the admissible evidence; modify the decision or reject the decision with a statement of reasons and corresponding findings of fact that are supported by a preponderance of evidence specifically indentified in the record. Any civil penalty assessed may not exceed the penalty originally assessed by the Director.